

STATE OF MICHIGAN  
COURT OF APPEALS

---

WOLTERS REALTY, LTD.,

Plaintiff-Appellee,

v

SAUGATUCK TOWNSHIP, SAUGATUCK  
PLANNING COMMISSION, and SAUGATUCK  
ZONING BOARD OF APPEALS,

Defendants-Appellants.

---

UNPUBLISHED

October 25, 2005

No. 247228

Allegan Circuit Court

LC No. 00-028157-CZ

ON REMAND

Before: Hood, P.J., and Donofrio and Borrello, JJ.

DONOFRIO, J. (*concurring*).

I concur with the determinations of the majority but write separately to address the finality issue. Plaintiff, in the instant action, unlike the plaintiffs in *Braun v Ann Arbor Twp*, 262 Mich App 154; 683 NW2d 755 (2004), did seek review before the Zoning Board of Appeals (ZBA). In *Braun*, the plaintiffs sought compensation for an alleged regulatory taking without first seeking redress before the ZBA and therefore proceeded without a final determination regarding the nature and extent of all permissible uses of the land at issue as currently zoned within a reasonable degree of certainty. In other words, when seeking economic damages it is incumbent on the plaintiff to “illustrat[e] the extent of the economic use of the property as it is currently zoned.” *Id.* at 159. The instant judicial action challenges the constitutionality of a zoning ordinance as applied to its land as being unreasonable and therefore a denial of due process. Plaintiff seeks to reverse the ZBA’s affirmation of the Planning Commission’s denial of a special applied use within the then existing zoning ordinance and the subsequent amended zoning ordinance which categorically denied the use. Plaintiff’s claim was for injunctive relief to specifically allow the sought-after special applied use rather than economic damages resulting from that denial. The ZBA’s affirmation was a final determination as it relates to the pleaded challenge and therefore plaintiff was not required to revisit the ZBA in order to achieve finality.

/s/ Pat M. Donofrio